

# MEMORANDUM OF AGREEMENT

DATED this *THIRTY FIRST* day of *JULY* 2002

**BETWEEN :**

The MINISTER FOR HEALTH FOR THE AUSTRALIAN CAPITAL TERRITORY of the ACT Legislative Assembly, London Circuit, Canberra 2601

(“the ACT Minister”)

**AND**

The MINISTER FOR HEALTH FOR THE STATE OF VICTORIA of Level 22, 555 Collins Street, Melbourne 3000

(“the Victorian Minister”)

**PART 1 : RECITALS**

**WHEREAS**

- A. Part 5A of the Victorian *Mental Health Act* 1986 and Part 5A of the ACT *Mental Health (Treatment & Care) Act* 1994 provide for the interstate application of mental health provisions.
- B. The Victorian Minister may, in accordance with section 93C of the Victorian Act, enter into an agreement with a Minister responsible for administering a corresponding law about any matter in connection with the administration of Part 5A of the Victorian Act or a corresponding law.
- C. The ACT Minister may, in accordance with section 48C of the ACT Act, enter into an agreement with a Minister of another State for or with respect to the application of interstate mental health laws, including transfer, detention and apprehension of persons in the ACT and the other State under mental health laws and any matter contained in or ancillary to Part 5A of the ACT Act.

- D.** The Victorian Minister and the ACT Minister now make this Agreement in accordance with their respective powers under section 93C of the Victorian Act and section 48C of the ACT Act to provide for the administration of Part 5A of the Victorian Act and Part 5A of the ACT Act and the corresponding laws declared under each of those Acts.
- E.** By this Agreement, the Victorian Minister and the ACT Minister provide for the administration of Part 5A of the Victorian Act and Part 5A of the ACT Act and provide for or with respect to the apprehension of persons in the ACT and Victoria only in relation to Victorian patients who are absent without leave and are in the ACT, and ACT patients who enter Victoria in contravention of a Mental Health Tribunal Order.

***IT IS AGREED :***

**PART 1: DEFINITIONS AND INTERPRETATION**

- 1.1** The following words and expressions have the following meanings unless the context otherwise requires:

**“Agreement”** means this Agreement including the Schedules and any Annexures;

**“ACT Act”** means the ACT *Mental Health (Treatment & Care) Act* 1994, including any regulations and orders made under that Act (but for the purposes of this Agreement a reference to the ACT Act does not, unless expressly provided, include a reference to the Victorian Act on the basis that the Victorian Act has been declared a corresponding law under that Act);

**“ACT approved facility”** means a facility proclaimed to be an approved health facility under section 48 (1)(a), or an approved mental health facility under section 48 (1)(b), of the ACT Act;

**“ACT Chief Psychiatrist”** means the ACT Chief Psychiatrist appointed in accordance with Part 10 of the ACT Act, and includes his or her delegate as appointed from time to time;

**“ACT Mental Health Tribunal”** means the tribunal established by section 10 of the ACT Act;

**“ACT patient”** means:

- (a) a mentally dysfunctional or mentally ill offender within the meaning of that term in section 4 of the ACT Act who may be apprehended in accordance with the ACT Act; or
- (b) a person ordered by a court of the ACT to be detained in custody until the ACT Mental Health Tribunal orders otherwise, who may be apprehended in accordance the ACT Act;

**“ACT Regulations”** means regulations made pursuant to Part 5A of the ACT Act;

**“Contact Officer”** means the person or persons so described in Schedule 1 of this Agreement;

**“corresponding laws”** means:

- (a) with respect to Victoria, the ACT Act when declared as such under and in accordance with s. 93B of the Victorian Act; and
- (b) with respect to the ACT, the Victorian Act when declared as such under and in accordance with s.48D (1) of the ACT Act;

**“Interstate Apprehension Order”** means the document that sets out the information specified in Part 4 of this Agreement and is set out in Schedule 2 to this Agreement and as amended from time to time in accordance with clause 4.3;

**“Interstate Guidelines”** means any guidelines developed in accordance with Part 7;

**“patient”** means a Victorian patient or a ACT patient;

**“Victorian Act”** means the Victorian *Mental Health Act* 1986, including any regulations and orders made under that Act (but for the purposes of this Agreement a reference to the Victorian Act does not, unless expressly provided, include a reference

to the ACT Act on the basis that the ACT Act has been declared a corresponding law under that Act);

**“Victorian approved mental health service”** means a premises or service proclaimed to be an approved mental health service by Governor in Council under section 94 of the Victorian Act;

**“Victorian Chief Psychiatrist”** means the Victorian Chief Psychiatrist appointed in accordance with section 105 of the Victorian Act, and includes his or her delegate as appointed from time to time;

**“Victorian patient”** means:

- (a) a security patient who may be apprehended in accordance with section 53 of the Victorian Act; or
- (b) a forensic patient who may be apprehended in accordance with section 53AD of the Victorian Act; or
- (c) an involuntary patient admitted to a Victorian approved mental health service under section 16(3)(a) of the Victorian Act or Part 5 of the *Sentencing Act 1991 (Vic)*, and who may be apprehended in accordance with section 43 of the Victorian Act;

**1.2** In this Agreement, unless the context requires otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) references to persons include corporations and bodies corporate;
- (c) references to clauses, Parts, Schedules and Annexures are references to clauses and parts of and Schedules and Annexures to this Agreement (unless stated otherwise);
- (d) references to a person include the legal personal representatives, successors and assigns of that person;
- (e) references to this or any other document include the document as varied or replaced, and notwithstanding any change to the identity of the parties.

## **PART 2: COMMENCEMENT OF AGREEMENT**

- 2.1 The parties acknowledge that this Agreement cannot be given full effect unless and until:
- (a) The ACT Regulations, including provisions declaring the Victorian Act to be a corresponding law for the purposes of the ACT Act and such other regulations as may be required in accordance with Part 5A of the ACT Act, are made and commenced; and
  - (b) Victoria promulgates an Order in Council in accordance with section 93B of the Victorian Act declaring the ACT Act to be a corresponding law for the purposes of Part 5A of the Victorian Act.
- 2.2 The parties agree that this Agreement shall commence on the day that the last of each of the things listed in this clause are done.

## **PART 3: AGREEMENT**

- 3.1 The purpose of this Agreement is to provide for matters in connection with the administration and implementation of Part 5A of the Victorian Act and Part 5A of the ACT Act but only insofar that these apply to and provide for the apprehension and return of ACT patients in Victoria and Victorian patients in the ACT and ancillary matters.
- 3.2 The application and effect of the ACT Act and the Victorian Act as corresponding laws of the participating States respectively is subject to the express limitations, conditions and variations imposed by the terms of this Agreement.
- 3.3 Nothing in this clause or otherwise in this Agreement is to be taken or construed as extending, limiting or otherwise varying the provisions of the ACT Act or the Victorian Act or a corresponding law declared under either Act, unless expressly provided.
- 3.4 The parties agree that they will co-operate in a spirit of goodwill to achieve the purposes of this Agreement.

- 3.5 Nothing in this Agreement prevents the issuing of a warrant under the terms of the ACT Act or the Victorian Act or any other legislation and reliance on the *Service and Execution of Process Act 1992 (Cth)* to apprehend a patient.

#### **PART 4: INTERSTATE APPREHENSION ORDERS**

- 4.1 The Interstate Apprehension Order is to be in the form attached as Schedule 2 to this Agreement, and is to include the following information:
- (a) the full name of the patient and his or her date of birth;
  - (b) a description of the patient;
  - (c) the status of the patient under the relevant mental health legislation;
  - (d) any information that may assist in the apprehension of the patient; and
  - (e) the name and address of the ACT approved mental health facility or Victorian approved mental health service to which the patient is to be returned.
- 4.2 The Interstate Guidelines may specify further information to be included in the Interstate Apprehension Order.
- 4.3 The parties agree that the form of Interstate Apprehension Order may be amended by the written agreement of the Chief Executive Officer of the ACT Department of Health and Community Care and the Secretary to the Department of Human Services (Victoria).
- 4.4 Prior to a party issuing an Interstate Apprehension Order, that party agrees to consult with the other party concerning the patient and the contents of the Interstate Apprehension Order which that party proposes to deliver in accordance with this Part.

#### **PART 5: APPREHENSION AND RETURN OF VICTORIAN PATIENTS**

- 5.1 This Part applies only to Victorian patients who are in the ACT.
- 5.2 The Victorian Minister undertakes to provide to the ACT Minister an appropriate Interstate Apprehension Order when the Victorian Minister becomes aware or has reasonable grounds to suspect that a Victorian patient is in the ACT.

- 5.3 The Victorian Minister undertakes to ensure that the Victorian Minister and relevant Victorian authorities will do all things that are required and within power to facilitate the apprehension and return of the Victorian patient named in the Interstate Apprehension Order.
- 5.4 The parties agree that the persons who may apprehend a Victorian patient in the ACT are as follows:
- (a) A person authorised to apprehend a Victorian Patient under the Victorian Act, those persons being:
    - (i) a prescribed person for the purposes of section 9 of the Victorian Act including a member of the Victorian police force and an ambulance officer;
    - (ii) an authorized psychiatrist for the purposes of the Victorian Act or any person authorized by the authorized psychiatrist;
    - (iii) an officer or employee of the Department of Human Service authorized by the Victorian Chief Psychiatrist;
  - (b) an ACT police officer or a person who is authorised to do so by regulations made pursuant to Part 5A of the ACT Act.
- 5.5 Subject to clause 5.6 the parties agree that on being apprehended, a Victorian patient shall be taken to the Victorian approved mental health service named in the Interstate Apprehension Order and that service will immediately accept and receive the patient.
- 5.6 Where the Victorian patient is apprehended by a person listed in subclause (b) of clause 5.4 above, the ACT Minister (or ACT Chief Psychiatrist) shall notify the Victorian Chief Psychiatrist that the Victorian patient has been apprehended and consult with the Victorian Chief Psychiatrist concerning the arrangements for the patient's return to Victoria.
- 5.7 The Victorian Minister (or the Victorian Chief Psychiatrist) shall, for the purposes of requesting the apprehension of a Victorian Patient, provide the ACT Department of Health with the following:
- (a) a copy of the relevant Interstate Apprehension Order;

- (b) any information which may assist in the apprehension of the patient;
- (c) a summary of the clinical and treatment history of the Victorian patient.

## **PART 6: APPREHENSION AND RETURN OF ACT PATIENTS**

- 6.1 This Part only applies to ACT patients who are in Victoria.
- 6.2 The ACT Minister undertakes to provide to the Victorian Minister an appropriate Interstate Apprehension Order when the ACT Minister becomes aware or has reasonable grounds to suspect that an ACT patient is in Victoria.
- 6.3 The ACT Minister undertakes to ensure that the ACT Minister and relevant ACT authorities will do all things that are required and within power to facilitate the apprehension and return of the ACT patient named in the Interstate Apprehension Order.
- 6.4 The parties agree that the persons who may apprehend a ACT patient in Victoria are as follows:
- (a) an ACT police officer, mental health officer or doctor, as provided under section 32A (3) of the ACT Act and section 93K of the Victorian Act;
  - (b) a person authorised to apprehend a Victorian patient under the Victorian Act, those persons being:
    - i) a prescribed person for the purposes of section 9 of the Victorian Act including a member of the Victorian police force and an ambulance officer;
    - ii) an authorized psychiatrist for the purposes of the Victorian Act or any person authorized by the authorized psychiatrist;
    - iii) an officer or employee of the Department of Human Service authorized by the Victorian Chief Psychiatrist.
- 6.5 Subject to clause 6.6, the parties agree that on being apprehended, the ACT patient apprehended shall be taken to the ACT approved facility named in the Interstate Apprehension Order and that service will immediately accept and receive the patient.



- 6.6 Where the ACT patient is apprehended by a person listed in subclause (b) of clause 6.4 above, the Victorian Minister (or the Victorian Chief Psychiatrist) shall notify the ACT Chief Psychiatrist that the ACT patient has been apprehended and consult with the ACT Chief Psychiatrist concerning the arrangements for the patient's return to ACT.
- 6.7 The ACT Minister (or the ACT Chief Psychiatrist) shall, for the purposes of requesting the apprehension of an ACT Patient, provide the Victorian Department of Health with the following:
- (a) a copy of the relevant Interstate Apprehension Order;
  - (b) any information which may assist in the apprehension of the patient;
  - (c) a summary of the clinical and treatment history of the ACT patient.
- 6.8 The parties acknowledge and agree that the powers set out in sections 9 (5), (6) and (7) of the Victorian Act may be exercised in respect of a ACT patient for the purposes of the taking of the patient to the ACT approved facility.

## **PART 7: INTERSTATE GUIDELINES**

- 7.1 The parties agree that during the course of this Agreement they will give consideration to whether written Interstate Guidelines to assist ACT and Victoria in the better administration of this Agreement are necessary or useful.
- 7.2 If the parties agree to develop Interstate Guidelines, they further agree that they will act co-operatively and in good faith to agree on their content.
- 7.3 The parties further agree that any Interstate Guidelines shall be reviewed and amended from time to time by negotiation and agreement between the Contact Officers.
- 7.4 Amendment to the Interstate Guidelines may only be by written agreement of the Chief Executive Officer of ACT Department of Health and Community Care and the Secretary to the Department of Human Services (Victoria).

## **PART 8: CONFIDENTIALITY OF INFORMATION**

- 8.1 The parties agree to treat all information acquired from the other party or otherwise acquired or created in the implementation of the Victorian Act, the ACT Act and the corresponding laws and this Agreement as confidential except to the extent that such information is in the public domain or as is otherwise permitted by law to be disclosed.
- 8.2 Any party who receives information from the other party or obtains or creates information in respect of a person from the other State agrees to treat that information in accordance with the legislation relating to privacy and the collection, keeping and disclosure of information that is in force in the receiving party's State.
- 8.3 The parties further agree that each State will take all reasonable steps to ensure that information obtained from the other State or obtained or created in respect of a person from the other State shall be dealt with so as not to cause the other State to offend any of that State's own privacy or confidentiality obligations.

## **PART 9: AMENDMENT OR VARIATION OF AGREEMENT**

- 9.1 The parties agree that they will review this Agreement at such intervals as are agreed between the parties.
- 9.2 Where a party considers that this Agreement should be amended, that party may request consultations with the other party to this end. A party so requested shall agree to consult and shall do so in the first instance through the Contact Officers of ACT and Victoria.
- 9.3 Amendments to this Agreement may only be made by the written agreement of the parties.
- 9.4 Any agreed amendments to the Agreement shall be contained in a document distributed to both parties and shall include a reference to the date on which the amendment shall come into force.

**PART 10: TERMINATION OF AGREEMENT**

- 10.1 The parties agree that either party may terminate the Agreement at any time by writing delivered to the other party provided that the first party has given the other party a minimum of 28 days written notice in advance of the first party's intention to terminate. The parties may agree to waive the requirement to give 28 days notice of an intention to terminate the Agreement.

**PART 11: CONTACT OFFICERS AND SERVICE OF DOCUMENTS**

- 11.1 The Contact Officer for ACT and Victoria for the purposes of this Agreement is set out in Schedule 1.
- 11.2 All documents or notices which may or are required to be delivered or served under this Agreement may be delivered or served as permitted by law. The address for service on the parties is as set out in Schedule 1.

**PART 12: SEVERANCE**

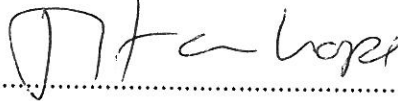
- 12.1 Any provision in this Agreement will be read down to the extent necessary to prevent that provision being invalid, voidable or unenforceable in the circumstances.

**PART 13: COUNTERPARTS**

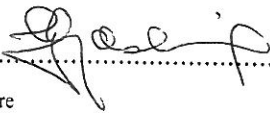
- 13.1 This Agreement may be executed in any number of counterparts each of which shall be deemed an original but all of which shall constitute one and the same instrument.

**SIGNED SEALED AND DELIVERED**

by the **MINISTER FOR HEALTH** for and on behalf of the Australian Capital Territory but not so as to incur personal liability in the presence of:

)  
)   
.....

) Jon Stanhope  
) Minister for Health  
for the Australian Capital Territory

  
.....  
Signature

Geoff Gosling  
.....  
Print Name

**SIGNED SEALED AND DELIVERED**

by the **MINISTER FOR HEALTH** for and on behalf of the State of Victoria but not so as to incur personal liability in the presence of:

)  
)   
.....

) John Thwaites  
) Minister for Health  
for the State of Victoria

  
.....  
Signature

Tass Mousafiriadis  
.....  
Print Name

**SCHEDULE 1  
AGREEMENT DETAILS**

**Contact Officer**

The Contact Officer for any issue arising out of the administration or application of the Agreement or the Corresponding Law is:

**For ACT:**                   the person holding the position of (or his/her delegate)  
Manager  
Mental Health and Corrections Health Unit  
Department of Health and Community Care  
**Address:** North Building, London Circuit Canberra 2601  
**Tel:** 02 6207 1066  
**Email:** [simon.rosenberg@act.gov.au](mailto:simon.rosenberg@act.gov.au)  
**Fax:** 02 6205 2037

**For Victoria:**           the person holding the position of Director  
Mental Health  
Department of Human Services  
**Address:** 555 Collins Street, Melbourne  
**Tel:** 03 9616 8123  
**Email:** [angela.jurjevic@dhs.vic.gov.au](mailto:angela.jurjevic@dhs.vic.gov.au)  
**Fax:** 03 9616 8726

# Interstate Apprehension Order

GIVEN NAME/S

FAMILY NAME (BLOCK LETTERS)

Date of Birth: ...../...../.....

**Patient subject to the ACT Mental Health (Treatment & Care) Act 1994**

- person ordered by a court to be detained in custody until the Mental Health Tribunal orders otherwise
- a mentally ill or mentally dysfunctional offender as defined in the Act.

**Patient subject to the Victorian Mental Health Act 1986**

- forensic patient as defined in the Act
- security patient as defined in Act
- an involuntary patient as described in s.16(3)(a) in the Act or Part 5 of the Sentencing Act 1991 (Vic)

The abovenamed is to be returned to: .....

name of \*approved mental health service / approved mental health facility

address of \*approved mental health service / approved mental health facility

Signed ..... Dated .....

GIVEN NAME/S

FAMILY NAME (BLOCK LETTERS) of \*Victorian Chief Psychiatrist / ACT Chief Psychiatrist

DESCRIPTION OF THE PATIENT	*Male / Female	Height:	Colour of eyes:
	Build:	Weight:	Complexion:

Description of the patient: .....

Distinguishing characteristics (eg. tattoos, scars): .....

Extra Details Attached: \*Yes / No

Information that will assist with Apprehension (eg. other names used; address where person may be found):

Extra Details Attached: \*Yes / No

Treatment Requirements: .....

Extra Details Attached: \*Yes / No

Risk Summary (include date of last assessment): .....

Extra Details Attached: \*Yes / No

**24 Hour Contact Person:**

Title:	Telephone:	Mobile:
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\* delete as necessary

## NOTES

### PERSONS AUTHORISED TO APPREHEND A PATIENT IN ACCORDANCE WITH THE INTERSTATE APPREHENSION ORDER

- (a) A person authorised to apprehend a patient under the Victorian Mental Health Act 1986, those persons being:
- (i) a prescribed person within the meaning of section 9 of the Victorian Act (including a member of the Victorian police force and an ambulance officer);
  - (ii) an authorized psychiatrist for the purposes of the Victorian Act or any person authorized by the authorized psychiatrist;
  - (iii) an officer or employee of the Department of Human Services authorized by the Chief Psychiatrist;
- (b) A person authorised to apprehend a patient under the ACT Mental Health (Treatment & Care) Act 1994, being defined as a doctor, police officer or mental health officer. A mental health officer is defined in the ACT Act as being a mental health nurse, psychologist or social worker (S119 (2)) who perform such duties for the purpose of the Act as the chief psychiatrist directs (S119(3)).

### VICTORIAN MENTAL HEALTH ACT 1986

#### 93K. Apprehension of persons absent from interstate facilities (as at 1 July 2002)

- (1) A person who is absent without leave or other lawful authority from an interstate mental health facility in a participating State and who may be apprehended under a corresponding law in that State may be apprehended in this State by--
- (a) a person who is authorised to apprehend the person under the corresponding law; or
  - (b) a prescribed person within the meaning of section 9; or
  - (c) an authorized psychiatrist or any person authorized by an authorized psychiatrist; or
  - (d) an employee of the Department authorized by the chief psychiatrist.
- (2) For the purpose of sub-section (1), a warrant or other document that, under the corresponding law, authorises the apprehension of the person in the participating State authorises their apprehension in this State.
- (3) A person who is apprehended under sub-section (1) must be taken to an interstate mental health facility in the participating State.
- (4) Sub-sections (5), (6) and (7) of section 9 apply to a person being taken to an interstate mental health facility under this section as if that person were a person to whom a recommendation relates being taken to an appropriate approved mental health service.
- (5) Despite sub-section (3), a person who is apprehended under sub-section (1) may be admitted to and detained in an approved mental health service under Division 2 of Part 3 pending his or her return to the participating State.
- (6) For the purposes of this section, a person is taken to be absent without lawful authority from an interstate mental health facility if the person did not return to the facility when required to do so under a corresponding law.

### ACT MENTAL HEALTH (TREATMENT & CARE) ACT 1994

#### Division 5—Apprehension of persons absent from custody or in breach of orders

##### 48P Recognition of apprehension orders

A warrant, order or other document issued under a corresponding law, being a document which authorises the apprehension of a person, is recognised in the Territory if the conditions for recognition set out in the regulations are met.

##### 48Q Apprehension of interstate persons absent without leave or in breach of orders

- (1) Where a person—
- (a) is the subject of a warrant, order or other document recognised in the Territory under section 48P; or
  - (b) is otherwise liable to be apprehended, under a provision of a corresponding law under which the person may be apprehended and taken to a health facility;  
the person may be apprehended at any time—
  - (c) by a police officer; or
  - (d) by a person who is authorised to do so by the regulations or under a provision of a corresponding law of the other, State.
- (2) A person who has been apprehended under this section may be—
- (a) conveyed to and detained in an approved health facility in the Territory; or
  - (b) where in accordance with the corresponding law.
- (3) The Act applies to a person conveyed to and detained in an approved health facility under paragraph (2) (a) as if the person were first detained at the facility in accordance with section 41 at the time of admission to the facility.